

# Senate Fiscal Agency



## NOVEMBER 2004 BALLOT PROPOSAL 04-2

An Overview

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Proposal 04-2 will appear on the ballot in the November 2 general election in the following form:

*A PROPOSAL TO AMEND THE STATE CONSTITUTION TO SPECIFY WHAT CAN BE RECOGNIZED AS A "MARRIAGE OR SIMILAR UNION" FOR ANY PURPOSE*

*The proposal would amend the state constitution to provide that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."*

*Should this proposal be adopted?*

Proposal 04-2 reached the ballot by initiative petition. If adopted, it will add a new section to Article I of the Michigan Constitution, which will include the language quoted above, "To secure and preserve the benefits of marriage for our society and for future generations of children..."

### Statutory Provisions

Both Federal and Michigan statutes contain provisions against same-sex marriage. In 1996, the Federal Defense of Marriage Act was signed into law. That Act denies Federal recognition of same-sex marriages and gives states the right to refuse same-sex marriage licenses from other states and to deny same-sex couples the benefits associated with marriage. According to the National Conference of State Legislatures (NCSL), 42 states, including Michigan, have either statutory or constitutional provisions defining marriage as being between a man and a woman.

In Michigan, Public Act 324 of 1996 amended the statute governing marriage to specify that a marriage contracted between individuals of the same sex is invalid in Michigan. That Act also specifically prohibits a man from marrying another man and a woman from marrying another woman. In addition, Public Act 334 of 1996 amended a statute that provides for the validation of marriages contracted by Michigan residents in another state. Public Act 334 limits this statute to marriages contracted between a man and a woman, and specifies that the provisions validating out-of-state marriages do not apply to a marriage contracted between individuals of the same sex. Both statutes provide that marriage "is inherently a unique relationship between a man and a woman".

### Developments in Other Jurisdictions<sup>1</sup>

Courts, legislatures, and public officials in other states and counties have made decisions and policies regarding same-sex marriages.

In 1996, a Hawaii court overruled a previous state ban on gay marriage, sparking a national debate on the subject. In 2000, the State of Vermont created a new legal relationship status called a "civil union". This reportedly allows same-sex couples to obtain all of the rights, responsibilities, and benefits available through marriage. According to the NCSL, however, both Hawaii and Vermont also have laws defining marriage as a union between a man and woman.

In April 2001, the Netherlands began allowing Dutch gay and lesbian couples to marry with the same privileges available to heterosexual couples. By 2002, France, Germany, Iceland, Norway, Sweden, and Switzerland all had adopted laws allowing registration of same-sex unions, with most or all of the rights of heterosexual married couples.

In June and July 2003, the Canadian provinces of Ontario and British Columbia began allowing same-sex couples to marry and obtain the full rights of marriage under Canadian law. This followed a court ruling that the law regarding traditional marriage was unconstitutional. In September 2004, officials in Manitoba began

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<sup>1</sup> Information in this section was obtained from MSNBC.com ("Timeline: Marriage Rights Battle"); NCSL.org ("Timeline - Same Sex Marriage"); and Stateline.org ("50-State Rundown on Same-Sex Marriage Laws").

issuing marriage licenses to same-sex couples following a judge's ruling, and a court in Nova Scotia changed the province's definition of marriage to "the lawful union of two persons to the exclusion of all others".

In November 2003, the Massachusetts Supreme Judicial Court ruled that the state's constitution guarantees equal marriage rights for same-sex couples. In February 2004, the same court ruled that allowing civil unions as an alternative to same-sex marriage would not be considered constitutional.

In the spring and summer of 2004, local officials in several states began issuing marriage licenses to same-sex couples and performing marriages. In most of those jurisdictions, courts or state attorneys general halted the practice. In Massachusetts, however, a Federal judge ruled in May against plaintiffs seeking to block same-sex marriages, and both the U.S. Court of Appeals and the U.S. Supreme Court refused to block municipal clerks in Massachusetts from issuing marriage licenses to same-sex couples. On May 17, same-sex couples began to marry in Massachusetts.

In August 2004, voters in Missouri approved an amendment to their state constitution stating, "to be valid and recognized...a marriage shall exist only between a man and a woman". In September 2004, Louisiana became the second state to adopt a state constitutional amendment banning same-sex marriage since the 2003 Massachusetts court ruling. According to an on-line public policy news service, Stateline.org, the amendment "restricts marriage to opposite-sex couples and prohibits state officials and courts from recognizing same-sex marriages or civil unions performed elsewhere".

In November, voters in 11 states, including Michigan, will decide on state constitutional amendments banning same-sex marriage, according to the NCSL.

#### Views on Proposal 04-2

Proponents of Proposal 04-2 embrace the traditional view of marriage as a heterosexual union, and contend that the approval of this amendment will protect the integrity of that institution. They believe that amending the Constitution is necessary to avert a judicial interpretation of law allowing same-sex marriage, as occurred last year in Massachusetts.

Proponents of Proposal 04-2 also contend that, without a constitutional amendment, same-sex couples who marry in other states or countries might be recognized by Michigan courts as being legally married in Michigan, despite the statutory language to the contrary.

A number of concerns have been raised about Proposal 04-2, in terms of both public policy and the amendment's potential conflict with other laws, including Federal statutes and State and Federal constitutional provisions. To some extent, the concerns relate to the meaning of the phrase "or similar union for any purpose".

Although Proposal 04-2 is widely seen as a ban on same-sex *marriage*, some people believe that the quoted phrase also will prohibit the recognition of any union of unmarried people, whether they are heterosexual or homosexual couples, if the proposal is adopted. By including the phrase "for any purpose", the amendment arguably has the potential to prevent employers from offering domestic partnership benefits (such as health insurance) to their employees' life partners. Some say that Proposal 04-2 will invalidate the domestic partnership benefits that some cities, universities, and private firms currently extend to both same-sex and opposite-sex unmarried couples.

To the extent that Proposal 04-2 does have this impact, it has been suggested that the amendment will conflict with constitutional provisions that prohibit the impairment of contracts and that require equal protection under the law. There also are concerns that the amendment will conflict with Federal laws governing labor relations and employee benefits.

Apart from these issues, some people believe that amending the State Constitution is not necessary in order to prevent the recognition of same-sex marriage, because both Federal and State statutes already do so. Michigan law also specifies that a marriage that is not between a man and a woman is invalid in this State, regardless of whether it was contracted under the laws of another jurisdiction. In addition, some people are

concerned about amending the Constitution for the purpose of restricting the rights of a segment of society, since the Constitution traditionally has been used to protect citizens' rights.

Unlike some constitutional amendments, Proposal 04-2 does not contain language requiring the Legislature to implement it by law. On the other hand, the proposal does not deny the Legislature the authority to do so. Although some people do not believe that the amendment is ambiguous, there are considerable differences of opinion about its potential impact. It is foreseeable that the courts ultimately will have to interpret the amendment, if the voters pass Proposal 04-2.